



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

NORTHERN REGIONAL OFFICE  
13901 Crown Court, Woodbridge, Virginia 22193  
(703)583-3800

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director  
(804) 698-4000

Thomas A. Faha  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Buckeye Terminals, LLC  
FOR  
Buckeye Chesapeake Terminal, Registration No. 60920 and  
Buckeye Fairfax Terminal, Registration No. 70220**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Buckeye Terminals, LLC, regarding the Buckeye Chesapeake Terminal and the Buckeye Fairfax Terminal facilities, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Buckeye" means Buckeye Terminals, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Buckeye is a "person" within the meaning of Va. Code § 10.1-1300.

3. "Chesapeake Facility" means the Buckeye Chesapeake Terminal facility, located at 4030 Buell Street, in Chesapeake, Virginia.
4. "Chesapeake Facility Permit" means the State Operating Permit to operate a bulk petroleum storage and distribution facility, located in Chesapeake, Virginia, which was issued under the Virginia Air Pollution Control Law and the Regulations to Buckeye on March 14, 2017.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Fairfax Facility" means the Buckeye Fairfax Terminal facility, located at 9601 Colonial Avenue, in Fairfax, Virginia.
8. "Fairfax Facility Permit" means the Title V Permit to operate a bulk gasoline terminal, located in Fairfax, Virginia, which was issued under the Virginia Air Pollution Control Law and the Regulations to Buckeye on March 12, 2015.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
13. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
17. "VOC" means volatile organic compounds.

**SECTION C: Findings of Fact and Conclusions of Law**

***Chesapeake Facility Findings of Fact and Conclusions of Law:***

1. Buckeye owns and operates the Chesapeake Facility in Chesapeake, Virginia. The Chesapeake Facility is the subject of the Chesapeake Facility Permit, which allows Buckeye to operate a bulk petroleum storage and distribution facility. The Chesapeake Facility is subject to truck loading rack emission controls and limits under 40 CFR 60, Subpart XX, Standards of Performance for Bulk Gasoline Terminals, and 40 CFR 63, Subpart BBBB, National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities. The loading rack emission control is a vapor collection system to collect total organic compounds, which includes VOCs, vapors from gasoline and denatured ethanol loadouts at the truck loading rack and vent the collected vapors to a vapor recovery unit ("VRU") control device, or a backup vapor combustion unit ("VCU").
2. By emails dated August 10 and August 24, 2020, Buckeye notified DEQ of a possible malfunction of the Chesapeake Facility VRU/VCU system beginning August 9, 2020. An emissions report was provided to DEQ in the email on August 24, 2020.
  - a. Buckeye estimated that the gasoline truck loading rack VRU system and VCU backup did not operate for 25.5 hours from 04:23AM August 9, 2020 to 06:00AM August 10, 2020. 675,028 gallons of gasoline were loaded during that 25.5-hour downtime.
  - b. Based upon submitted information, estimated uncontrolled VOC emissions during the 25.5-hour downtime of the VRU/VCU system were 132.06 pound per hour, totaling 1.6838 tons of VOC emissions.
3. Condition 5 of the Chesapeake Facility Permit states: "The permittee shall operate a vapor collection system to collect total organic compound vapors displaced from cargo tanker trucks during gasoline and denatured ethanol loading operations and route the collected vapors to a carbon adsorption/absorption recovery unit for processing."
4. Condition 6 of the Chesapeake Facility Permit states: "During maintenance downtime periods and/or malfunction episodes involving the VRU, the permittee shall be allowed to use the backup vapor combustion unit to process the collected gasoline and denatured ethanol vapors from the loading operations of cargo tanker trucks at the loading rack."
5. Condition 16 of the Chesapeake Facility Permit requires that VOC emissions from the operation of petroleum product storage tanks and loading operations not exceed the specified limit of 6.8 pounds per hour for truck loading.
6. 9 VAC 5-170-160(A) provides that the Board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law.

7. Va. Code § 10.1-1322(A) states that pursuant to the regulations adopted by the Board, permits may be enforced under the provisions of this chapter and failure to comply with any condition of a permit shall be considered a violation of this chapter.
8. On November 12, 2020, based on DEQ's evaluation of submitted information, DEQ-TRO issued a Notice of Violation (NOV No. ATRO001646) to Buckeye for the violations at the Chesapeake Facility described above in paragraphs C(1) through C(7).
9. DEQ discussed the NOV with Buckeye via phone on November 17, 2020, and via email on November 20, 2020. Buckeye pointed to its August 24, 2020 notification report to DEQ that explained the power supply unit for the Chesapeake Facility VRU system Programmable Logic Controller (PLC) failed at 04:23AM August 9, 2020, and the system failed to properly switch to the backup VCU system. The issue was noticed by Buckeye staff at approximately 05:00PM on August 9, 2020, and corrected by 06:00AM on August 10, 2020.
10. Based on Buckeye's emails to DEQ dated August 10 and 24, 2020, DEQ's evaluation of information and NOV issuance to Buckeye on November 12, 2020, and related correspondence between DEQ and Buckeye, the Board concludes that Buckeye has violated Conditions 5, 6, and 16 of the Chesapeake Facility Permit as described above in paragraphs C(1) through C(9).
11. As stated in Buckeye's submission to DEQ dated August 24, 2020, and confirmed in follow-up correspondence with DEQ, the equipment issues that resulted in the violations have been corrected. Buckeye has adequately demonstrated a return to compliance at the Chesapeake Facility.

***Fairfax Facility Findings of Fact and Conclusions of Law:***

12. Buckeye owns and operates the Fairfax Facility in Fairfax, Virginia. The Fairfax Facility is the subject of the Fairfax Facility Permit, which allows Buckeye to operate a bulk gasoline terminal.
13. DEQ visited the Fairfax Facility on August 5, 2020, to observe planned stack testing of the facility's Vapor Combustion Unit (VCU).
  - a. The testing event on August 5, 2020, was stopped after approximately 1.8 hours due to issues discovered during the testing.
  - b. While onsite, DEQ was informed by Buckeye that an additional incomplete stack test was attempted on June 4, 2020, but that testing event was also stopped [after approximately 1.9 hours] due to issues discovered during the testing.
  - c. As of August 13, 2020, the most recent complete, valid compliance test of the VCU was performed August 12, 2015.

14. Condition 40 of the Fairfax Facility Permit states: "Once each permit term (five years), with no more than sixty months between tests, the permittee shall conduct a stack test for VOCs from the vapor control system (VRU and VCU) to demonstrate compliance with the emission limits in Condition 14. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5-50-30. Should an application shield be in place and the renewed permit has not been issued, the five year period will continue to proceed as if the permit had been renewed.(9 VAC 5-88-110 and 9 VAC 5-50-30)
15. DEQ received a report submission from Buckeye on September 1, 2020 (dated August 31, 2020) reporting the results of the partial/incomplete stack testing conducted June 4, and August 5, 2020, at the Fairfax Facility.
  - a. Buckeye reported 1.05E+07 mg TOC emissions from the loading of 394,401 Liters of gasoline (an emission rate of 23.62 mgTOC/Liter Loaded) on June 4, 2020.
  - b. Buckeye reported 1.38E+07 mg TOC emissions from the loading of 488,462 Liters of gasoline (an emission rate of 28.25 mgTOC/Liter Loaded) on August 5, 2020.
  - c. In data submitted to DEQ on January 16, 2021, Buckeye reported that the VCU system was operated for approximately 324 hours from June 4, 2020, through August 5, 2020, and no other emissions data was provided to demonstrate any lower emission rates than the rates observed during the incomplete stack testing events.

The data reported by Buckeye was in units of mg TOC/liter of gasoline loaded and does not demonstrate compliance with the emission limit specified in Condition 14 of the Fairfax Facility Permit as stated below.
16. Condition 14 of the Fairfax Facility Permit requires, as a process equipment requirement of the loading rack, that "[e]missions from the operation of the vapor recovery unit/vapor combustion unit (VRU/VCU) for gasoline loading losses shall not exceed 10 milligrams VOC/liter of gasoline loaded.(9 VAC 5-80-100 and Condition 7 of the April 23, 2003 NSR permit)."
17. Condition 17 of the Fairfax Facility Permit requires, as a process equipment requirement of the loading rack, that "[t]he vapor collection system shall collect the total organic compound vapors displaced from tanker trucks during gasoline loading."
18. Condition 73 of the Fairfax Facility Permit states: "The permittee shall notify the Regional Air Compliance Manager of the DEQs NRO within four daytime business hours after discovery of any deviations from permit requirements which may cause excess emissions for more than one hour, including those attributable to upset conditions as may be defined in this permit. In addition, within 14 days of the discovery, the permittee shall provide a written statement explaining the problem, any corrective actions or preventative measures taken, and the estimated duration of the permit deviation. The occurrence should also be reported in the next semi-annual compliance monitoring report pursuant to Condition 69 of this permit.(9 VAC 5-80-110 (F)(2) and 9 VAC 5-80-250)."

19. Condition 74 of the Fairfax Facility Permit states: "In the event that any affected facility or related air pollution control equipment fails or malfunctions in such a manner that may cause excess emissions for more than one hour, the owner shall, as soon as practicable but no later than four daytime business hours after the malfunction is discovered, notify Regional Air Compliance Manager of the DEQs NRO by email, facsimile transmission, telephone or telegraph of such failure or malfunction and shall within 14 days of discovery provide a written statement giving all pertinent facts, including the estimated duration of the breakdown. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the Regional Air Compliance Manager of the DEQs NRO.(9 VAC 5-20-180 C)."
20. 9 VAC 5-170-160(A) provides that the Board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law.
21. Va. Code § 10.1-1322(A) states that pursuant to the regulations adopted by the Board, permits may be enforced under the provisions of this chapter and failure to comply with any condition of a permit shall be considered a violation of this chapter.
22. On September 22, 2020, based on DEQ's evaluation of submitted information, DEQ-NRO issued a Notice of Violation (NOV No. ANRO001616) to Buckeye for the violations at the Fairfax Facility described above in paragraphs C(12) through C(21).
23. On October 14, 2020, Buckeye submitted a written response to the NOV, and on October 19, 2020, DEQ and representatives of Buckeye had a conference call to discuss Buckeye's NOV reply and enforcement proceedings. Buckeye explained that it had corrected the equipment issues and completed a compliant, valid stack test of the Fairfax Facility VCU on September 24, 2020 (results submitted to DEQ-NRO on October 13, 2020).
24. On January 6, 2021, DEQ emailed Buckeye, requesting further information about operation of the VRU/VCU system. Buckeye submitted a reply to DEQ via email on January 22, 2021.
25. Based on DEQ's site visit on August 5, 2020, the emission report submitted to DEQ dated August 31, 2020, Buckeye's NOV response dated October 14, 2020, the conference call meeting on October 19, 2020, the information submitted via email on January 22, 2021, and related correspondence and submissions between DEQ and Buckeye, the Board concludes that Buckeye has violated conditions 14, 17, 40, 73 and 74 of the Fairfax Facility Permit as described above in paragraphs C(12) through C(24).
26. In order for Buckeye to complete its return to compliance at the Fairfax Facility, DEQ staff and representatives of Buckeye have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Buckeye, and Buckeye agrees to pay a civil charge of **\$78,045.54** (\$36,900.00 for the Chesapeake Facility and \$41,145.54 for the Fairfax Facility) within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Buckeye shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Buckeye shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Buckeye for good cause shown by Buckeye, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. ATRO001646 dated November 12, 2020, regarding the Buckeye Chesapeake Facility, and in NOV No. ANRO001616 dated September 22, 2020, regarding the Buckeye Fairfax Facility. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Buckeye admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Buckeye consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Buckeye declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or

other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Buckeye to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Buckeye shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Buckeye shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Buckeye shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Buckeye. Nevertheless, Buckeye agrees to be bound by any compliance date which precedes the effective date of this Order.




11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Buckeye has completed all of the requirements of the Order;
- b. Buckeye petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Buckeye.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Buckeye from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Buckeye and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Buckeye certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Buckeye to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Buckeye.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Buckeye voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 12<sup>th</sup> day of July, 2021.

  
Thomas A. Faha, Regional Director  
Department of Environmental Quality

----- (Remainder of Page Intentionally Blank) -----

Buckeye Terminals, LLC voluntarily agrees to the issuance of this Order.

Date: 7/6/21 By: William R. Serra, VP. Operations  
(Person) (Title)  
Buckeye Terminals, LLC

Commonwealth of ~~Virginia~~ Pennsylvania  
City/County of Lehigh

The foregoing document was signed and acknowledged before me this 6th day of  
July, 2021, by William R. Serra who is  
V.P. Operations of Buckeye Terminals, LLC, on behalf of the corporation.

Robin L. Billger  
Notary Public  
1027540  
Registration No.

My commission expires: 8-4-2025

Notary seal:

Commonwealth of Pennsylvania - Notary Seal  
Robin L. Billger, Notary Public  
Lehigh County  
My commission expires August 4, 2025  
Commission number 1027540  
Member, Pennsylvania Association of Notaries

## **APPENDIX A**

### **SCHEDULE OF COMPLIANCE**

Buckeye Terminals, LLC shall:

1. Submit to DEQ written status update reports of the Fairfax Facility VRU/VCU according to the schedule listed below.
  - a. a submission to DEQ by October 15, 2021, to report information and data from the date of execution of this Order through September 30, 2021; and
  - b. a submission to DEQ by January 14, 2022, to report information and data from September 1, 2021 through December 31, 2021.

The report submissions shall include documentation of the downtimes of the VRU (date, start, and stop times), operational times for the VCU (date, start, and stop times), explanations for the VRU downtime and VCU operations, documentation of the VCU flame verification/observation, maintenance logs for both the VRU and VCU, and should include any other information that Buckeye feels is pertinent to demonstrate that operation of the VRU/VCU system at the Fairfax Facility continues to comply with the Fairfax Facility Permit.

2. In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, Buckeye, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

3. Unless otherwise specified in this Order, Buckeye shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality  
Northern Regional Office  
Attention: Enforcement  
13901 Crown Court  
Woodbridge, VA 22193